

In re) Fair Hearing No. 15,465
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare terminating her Medicaid benefits and establishing a spend-down of \$2,704.20 to re-establish eligibility.

1. The petitioner is a forty-eight-year-old disabled woman who receives \$503 per month in Social Security benefits. She lives with her husband who began working about three months ago as a maintenance man at a hotel and earns \$1,454 per month, although his income can fluctuate.

2. Based on this information, DSW recalculated the couple's eligibility for Medicaid benefits. The Department gave the family a \$65 working expense deduction from the husband's earned income and then disregarded half of the remainder of his income for a countable earned income of \$694.50 for the husband. The petitioner's unearned Social Security income was then subjected to a standard deduction of \$20, and the remainder, \$483, was added to the husband's countable income for a total countable income of \$1,177.50. The Department compared that to the maximum income level (the "protected income level" or "PIL") for a two person

Medicaid group and determined that the couple was ineligible. Their spend-down (the amount of medical expenses they must incur in a six month period before Medicaid can resume) was calculated by multiplying the difference between the PIL and their countable monthly income, a figure of \$494.50, times six, representing the six months. A total spend-down amount of \$2,704.20 was obtained.

3. The petitioner was notified by letter mailed on April 16, 1998, that her eligibility would cease April 15, 1998. Her ineligibility was incorrectly calculated originally and she was notified in a Commissioner's Review letter that her spend-down amount was \$6,841 for the period between April 1, 1998 and September 30, 1998. At the hearing on May 28, 1998, she was handed a new corrected notice indicating that her ineligibility began on April 25, 1998, and that the spend-down amount was \$2,704.20 for the period from April 1, 1998 to September 30, 1998.

4. The petitioner does not disagree with the figures used by the Department. She believes the decision is unfair because she has no out of pocket money to pay her considerable medical expenses which include psychiatric therapy on an ongoing basis for agoraphobia and shots she receives for degenerative joint disease which alone cost \$380 per month. She is trying to rehabilitate herself to work and fears that without the help she will regress. Her

husband is unable to get health insurance through his work and they have been found to be ineligible for VHAP due to excess income as well.

ORDER

The decision of the Department is affirmed except the first date of ineligibility should be amended to read April 26, 1998.

REASONS

In this case the petitioner does not dispute the amount of her applied income as determined by the Department.¹ Since the petitioner qualifies for Medicaid under the "category" of SSI/AABD (disabled) criteria, the couple's eligibility must be calculated pursuant to the rules at M243.1. Those rules determine the eligibility of the couple by subjecting their earned and unearned income to certain disregards, adding the net together and comparing it to the protected income level. The calculations performed by the Department as set forth in paragraph two above are consistent with those rules.

The protected income level (PIL) for a household of two is \$683 per month. See Procedures Manual § P-2420B. Under

¹ The petitioner stated at hearing that her husband's income may have changed since the initial determination because his hours fluctuate. She was encouraged to bring that information to the attention of the Department.

the Department's regulations, the petitioner may qualify for Medicaid coverage if her income is above the PIL if she incurs or "spends-down" the difference between her net income and the PIL over a six month period. M400, 401. The final calculation of the spend-down amount given to her on May 28, 1998, is correct. Unfortunately for the petitioner, the Medicaid formulas do not take into account the amount of medical expenses the recipient has in determining initial eligibility except insofar as they may be used to meet the "spend-down" amount. The Department's decision to terminate the Medicaid benefits is in accordance with its Medicaid regulations and must be upheld. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

However, the date of ineligibility for Medicaid was inappropriately determined. Under the Department's minimum advance notice regulation which governs all programs, written notice of an action "must be mailed no less than 10 days prior to the effective date of the proposed action." W.A.M. 2143. The first notice which purported to terminate the petitioner's benefits on the day before the notice was mailed was grossly wrong. The corrected notice, while closer to the mark, named April 25, 1997, as the date of ineligibility. For such a date to be effective as a termination date, the notice would have to be mailed at least ten days prior to that date, or April 15, 1998. The best way to remedy this error is to reform the date of

ineligibility to April 26, 1997, the first date on which eligibility could have occurred under the above regulation.

The petitioner was made aware at the hearing that she should bring in evidence of all medical expenses incurred during this time period to meet her spend-down. If she is unable to pay any medical expense up front and feels that she thereby faces a medical emergency, she can apply to the Department for a determination of her eligibility for General Assistance benefits. She should also be aware that she may appeal her VHAP denial if she so chooses, but should do so at once.

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